

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:19-CV-00027-KDB-DCK**

BRIAN RICHARD HARWELL,

Plaintiff,

v.

**DARREN EUGENE CAMPBELL,
ET AL.,**

Defendants.

ORDER

THIS MATTER is before the Court pursuant to its Order to Show Cause (Doc. No.39) in which the Court ordered Plaintiff, a licensed attorney representing himself *pro se*, to appear and explain why he has repeatedly failed to prosecute this action. Plaintiff did not appear for the scheduled hearing to show cause on February 15, 2022 despite reasonable advance notice. Therefore, as the Court told Plaintiff would occur if he did not establish cause for his lack of participation in the case, the Court will dismiss this action with prejudice.

Plaintiff Harwell brought this action on March 14, 2019, alleging that Defendants violated 42 U.S.C. § 1983 in several respects during his during his arrests and detentions by law enforcement officers in July 2018 and January 2019. From February 2020 until August 2021, this matter was stayed pending the resolution of Plaintiff's related state criminal cases. (*See* Doc. No. 20). However, since the stay ended in August 2021, Plaintiff, who again is a licensed attorney, has not participated in the action, failing 1) to attend the parties' Rule 26(f) conferences in September and October 2021; 2) to respond to Defendants' Motion for Judgment on the Pleadings (despite the entry of a Roseboro Order, Doc. No. 35); or 3) to respond to discovery requests that were due

on December 1, 2021, despite Defendants' counsel's repeated efforts to communicate with him by email, phone and mail. (*See* Doc. No. 38).

On February 1, 2022, the Court ordered Plaintiff to appear before the Court on February 15, 2022 to show cause why this case should not be dismissed for Plaintiff's failure to pursue his claims and participate in this action. The Order informed Plaintiff that in the event Plaintiff did not appear for the hearing, "the Court will assume that Plaintiff does not want to proceed with this action, which will thereafter be dismissed with prejudice." (Doc. No. 39). Although the Court was not required to do so, this Order was mailed to Plaintiff at his law firm address and a certified mail receipt shows that the Order was delivered on February 8, 2022. (*See* Doc. No. 41). Plaintiff failed to appear for the hearing and did not communicate with the Court prior to or following the hearing to explain his absence. At the hearing, Defendants made an oral motion to dismiss the action for failure to prosecute.

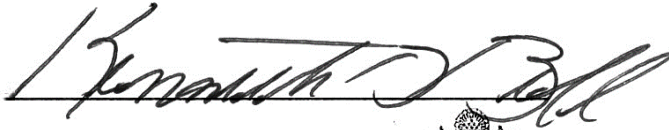
In sum, the Court has given Plaintiff every reasonable opportunity (and then some) to pursue his alleged claims, but he has repeatedly chosen not to do so. It is unfair to the Defendants and a waste of the Court's time to continue an action in which Plaintiff won't participate. Therefore, the Court has no choice but to dismiss this action, with prejudice.

NOW THEREFORE IT IS ORDERED THAT:

1. This action is dismissed with prejudice for Plaintiff's failure to prosecute his claims; and
2. The Clerk is directed to close this matter in accordance with this Order.

SO ORDERED ADJUDGED AND DECREED.

Signed: February 16, 2022

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell
United States District Judge

